IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.414 OF 2004
IN
WRIT PETITION NO.2865 OF 1996

New Era Fabric Pvt.Ltd., ..Appellants

Versus

Triveni Ram Sahadev Yadav & Anr. ..Respondents

Mr.S.K.Talsania i/by Sanjay Udeshi & co. for appellants.

Mr.P.M.Mokashi for Respondent No.1.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 7.4.2005.

Oral Judgment :- (Per : R.M.Lodha,J)

. Heard.

2. Admit.

3. Mr.P.M.Mokashi waives service for Respondent No.1. Respondent No.2 is a formal party and therefore, service is dispensed with on him.

4. By consent of the learned Counsel for the parties, Appeal is heard finally at this stage.

5. The only challenge in this Appeal is to the part

of the order dated 29.6.2004 contained in paragraph-7 thereof. Paragraph-7 of the impugned order read thus :-

> Having heard the learned Counsel on the question of backwages and keeping in mind the fact that the workman having not made any positive assertion that he had not earned during the interregnum , I find that an amount of Rs.1,00,000/- (Rupees One lac only) would be an appropriate amount to be paid to the workman as backwages. This amount shall be paid to the workman within eight weeks from today.

6. Having considered the matter, we find that the aforesaid order passed by the learned single Judge awarding Rs.1,00,000/- towards backwages to the workman is not supported by good reason much less any reason at all. The termination of the workman having been held bad in law backwages follow as a matter of course. Denial there-of must be founded on adequate reasons. If the workman was in employment during the interregnum, obviously, he may not be entitled to backwages. The learned single Judge observed that the workman has not made any positive assertion that he had not earned during the interregnum. What is meant by that is not understandable. The workman in his deposition stated that at present he was out of job. Its effect must have been seen by the learned single Judge. The basis of the award in the sum of Rs.1,00,000/- towards back wages is not reflected

from the order.

7. Be that as it may, in our considered view, the aspect of backwages requires re-consideration by the learned single Judge.

8. We, accordingly, dispose of the Appeal by the following order :-

O R D E R

1. The Judgment dated 29.6.2004 is maintained save and except paragraph-7 thereof.

2. Paragraph-7 of the aforesaid Judgment dated 29.6.2004 is set aside and Writ petition No.2865 of 1996 to the extent of back wages is restored and remitted back to the learned single Judge for fresh consideration.

3. No costs.

(R.M.LODHA,J)

(R.S.MOHITE,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.46 OF 2005
IN
LETTERS PATENT APPEAL NO.414 OF 2004
IN
WRIT PETITION NO.2865 OF 1996

New Era Fabric Pvt.Ltd., ..Applicants

Versus

Triveni Ram Sahadev Yadav & Anr. ..Respondents

Mr.S.K.Talsania i/by Sanjay Udeshi & co. for applicants.

Mr.P.M.Mokashi for Respondent No.1.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 7.4.2005.

P.C.

. In view of disposal of Appeal, Civil application does not survive and is disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)